



## Mission Support Alliance Provision

### **SPECIAL PROVISIONS - FIXED PRICE CONSTRUCTION CONTRACTS SP-4 Rev 1 November 2, 2010**

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## 1.0 PREAMBLE

These Special Provisions are a part of the requirements of any contract in which this Special Provision document is incorporated and are applicable in their entirety unless specific paragraphs are excluded or amended in the Contract text. All of the clauses are in addition to those of the General Provisions and any other Special Provisions that may apply to this Contract. In the event of a conflict between these Special Provisions and the terms and conditions contained in the General Provisions of this Contract, these Special Provisions shall take precedence.

The term buyer shall mean the Contracting Officer or Contract Specialist authorized to represent the Buyer issuing this contract. The term “Buyer” refers directly to MSA, the company or organization issuing this Contract.

## 2.0 TAXES

The contract price includes all taxes, duties and fees. The Contractor shall not be reimbursed for personal property taxes on construction equipment and other property owned by the Contractor, nor on taxes on net income of the Contractor.

The Contractor shall pay when due, and the contract price shall include, all taxes, duties, fees and other assessments of whatever nature imposed by government authorities and applicable to the performance of the Work and this contract.

## 3.0 GENERAL LIMITATIONS, REQUIREMENTS, AND WORKING CONDITIONS

- A. Orientation. Prior to entry by the Contractor onto the Worksite, the Contractor's supervisory employees shall attend a general orientation (to be conducted by the Buyer) to acquaint themselves with the working conditions and requirements to be imposed at the Worksite. It shall be the responsibility of the Contractor to orient all its other employees, its Subcontractors and their employees, as to such working conditions and requirements.
- B. Overhead Restrictions. Under no conditions shall the Contractor operate or move cranes, hoists or similar equipment within twenty (20) feet of overhead electrical conductors, guy wires, or substations, unless prior authorization for such operations is obtained from the Buyer, giving full details of the method of equipment operations. Authorization from the Buyer shall also be obtained when transporting materials, machinery, or other equipment which establishes a height exceeding fourteen (14) feet from the road and/or ground surface.
- C. Oversize/overweight. Shippers shall require vehicle operators to obtain a permit when the vehicle or non-reducible load exceeds the following dimensions and or weight:

Legal Dimensions

Width: 8 feet, 6 inches

Height: 14 feet

Length: with or without load



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Single unit: 40 feet  
Single trailers: 53 feet

### Combination:

Truck and trailer: 75 feet  
Two trailers: 61 feet

### Legal Weights

Single axle: 20,000 pounds  
Tandem axles: 34,000 pounds  
Steering axles: tire size x 600 pounds per inch of width

1. Permits for overweight loads may be obtained for a higher gross weight if the load concentration upon the road surface does not exceed 600 pounds per inch width of tire, 22,000 pounds on a single axle or 43,000 pounds on tandem axles.
2. Movement of any oversize or overweight load within the Hanford Site boundaries shall be in accordance with the Washington Administrative Code (WAC) and Revised Code of Washington (RCW).
3. Oversize/overweight Load Permits shall be obtained by calling 376-6654 or 376-7902 before transporting oversize or overweight loads on Hanford Site roads.
4. If oversize or overweight loads are transported off the Hanford Site over state or county roads, an oversize load permit must be obtained from the Washington State Department of Transportation (fees apply).
5. Weather permitting, Hanford Site over dimensional load movement is restricted Monday through Friday to the hours of 8:30 a.m. through 3:00 p.m., with other days and times as stated in the permit.
6. Signs. Oversize load signs (at least 7 feet long and 18 inches high with black lettering at least 10 inches high in 1.41 inch brush stroke on yellow background) will be mounted on the front of the towing vehicle and on the rear of the load or trailing unit. Such signs are to be displayed only when the unit is in transit and must be removed or retracted at all other times. Signs are not required on loads that are overweight only.
7. Flags. All flags shall be clean, bright red flags at least 12 inches square. They shall be displayed so as to wave freely on all four corners of over width objects and at the extreme ends of all protrusions, projections, or overhangs.
8. Escort car requirements:
9. When vehicle, vehicles or load is over 11 feet in width, escort cars (both front and rear) are required on a two-lane highway.
10. When vehicle, vehicles or load is over 14 feet wide, one escort car in the rear is required on multiple-lane highway.



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11. When vehicle, vehicles or load is over 20 feet wide, escort cars in both front and rear are required when the highway is a multiple-lane, undivided highway.
  12. When overall length of load, including vehicles, exceeds 100 feet or when rear overhang of load measured from the last axle exceeds one-third of the total length, one escort car is required on two-lane highways. The permit may authorize a riding flag person in lieu of an escort car.
  13. If required by Site Transportation, escort cars shall be used when they are necessary to protect the traveling public.
  14. Communication. Both towing unit and escort vehicles shall have two-way radio capabilities, adequate to provide communications between drivers at all times during which the oversize unit is in motion.
  15. Prior to travel, for vehicles more than 14 feet high, a route with safe overhead clearances must be selected and reviewed with the driver. Routing and schedules shall be coordinated with Utility Operations (373-2077 or 373-2352) and Tri-City Railroad Operations (371-8313).
  16. Road closures require advising Hanford Patrol 373-3800, Fire Department 373-2745, and the Benton County Sheriff's office (376-1022 or email : Benton\_County\_Sheriffs\_Office@rl.gov)
  17. Rubber-tired heavy equipment with road capability traveling on highways must be equipped with "SLOW MOVING VEHICLE" signs on the rear. Buckets, fork heels, etc., shall be kept as low as possible; if they extend more than 3 feet ahead of the vehicle, they shall be flagged for daylight use and marked with yellow lights in darkness. Tracked units, i.e., bulldozers, are not to be operated on paved roads except for approved crossings.
  18. Special permits do not authorize the operation of any vehicle without having the load securely fastened and protected against shifting or falling in accordance with the Code of Federal Regulation, Title 49, part 393.100, RCW 46.61.655, WAC 468-38-200.
- D. Explosives. The use of explosives requires express written authorization from the Buyer.
- E. Heavy Equipment. Heavy equipment will not be allowed to cross existing paved roadways unless such roadway is protected by rubber tires or other adequate protection such as heavy planking. Movement of heavy equipment equipped with crawler-type treads on existing paved surfaces is forbidden and such equipment must be transported to the Worksite on rubber-tired trailers. Upon completion of the Work, the equipment shall be promptly removed from the Worksite.
- F. Work Area Housekeeping. The Contractor shall at all times keep the Work area, including storage areas used by it, in an orderly condition free from accumulations of waste materials or rubbish. All materials shall be kept in neat piles and protected from the elements until installed. Prior to or upon completion of the Work, the Contractor shall remove from the Worksite all rubbish, and all tools, scaffolding, equipment and materials not the property of the Government or the Buyer. Upon completion of the Work, the Contractor shall leave the construction area in a clean, neat condition, satisfactory to the Buyer.



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- G. **Work Area Limitations.** The Contractor shall restrict its personnel and operations to the limits of the Work area. Any changes and or modifications to existing installations located at the outer limits of the Work area shall be permitted only after specific approval is received from the Buyer.
- H. **System Outages.** Work which requires any existing building utility system (excluding fire protection) to be taken out of service shall be scheduled and performed so that the length of time the utility is out of service is held to a minimum. All material for alteration and tie-in work shall be on hand when each utility service interruption is scheduled. The Contractor shall notify the Buyer not less than fourteen (14) calendar working days prior to each required utility shutdown. All tie-in work shall be scheduled and performed so that the shutdown time will not exceed four (4) hours for water and two (2) hours for electrical or fire alarm. Methods of performing the tie-in work shall be approved by the Buyer prior to any utility system outage. Prior approval must be obtained for connection to and use of existing fire hydrants.
- I. **Removal and Disposal of Existing Equipment and/or Materials.** All miscellaneous items removed by the Contractor and not specified to be reused shall remain the property of the Government, and shall be placed at a location adjacent to the Worksite as directed in the field by the Buyer.
- J. **Special Excavation Requirements**
1. “As part of the excavation work planning and execution process, the Contractor together with the BTR shall perform a job hazard analysis and submit to the Buyer for approval. An excavation permit is required for any mechanical digging or hand digging to a depth greater than 12 inches (304.8 mm). The Buyer (BTR) will provide an approved permit to the Contractor prior to the Contractor initiating the excavation. Where required, the Contractor shall provide cribbing or shoring for excavation to prevent undermining or movement of any load bearing concrete slabs or footings and shall comply with 29 CFR 1926, Subpart P, *Excavations* (OSHA), and WISHA regulations.
  2. For any excavation, including those less than 12 inches deep, the Contractor shall notify the Buyer (BTR) prior to the contractor performing excavation to allow time for Buyer to perform sub-surface **scanning** and/or evaluate soil contamination (radiological or hazardous materials), if required.”
  3. In the event any underground pipe line, conduit or other object not shown on the drawings or otherwise indicated in the Specifications is encountered, the Contractor shall immediately stop work and notify the Buyer.
  4. Except as otherwise specified, protection (and restoration) of existing facilities shall be as specified in Section 7.0. All underground piping, conduits, ducts, and other utilities shall be safely shored, braced and/or guyed as specified in the above referenced section.
- K. **Fire Protection Outages.** Work which requires a fire alarm system, fire sprinkler system or fire hydrant to be taken out of service shall be scheduled so that the length of reduced system performance is minimized. If the outage is due to alteration or tie-in, all materials required to complete the work shall be on hand before the start of the alteration or tie-in. The Contractor shall notify the Buyer at least five (5) working days before starting work which will require a system outage. Notification shall identify portions of the system which will be affected. The Buyer will coordinate the outage with the Contractor and others, and arrange for fire department standby if required. If a fire alarm system is to be out of service for more than four (4) consecutive hours, a Buyer approved fire watch shall be provided by the Contractor, for those



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areas of a building affected by the outage. If a fire sprinkler system is to be out of service for more than four (4) consecutive hours, a building shall either be evacuated or a Buyer approved fire watch shall be provided by the Contractor. The building evacuation or fire watch shall be maintained until the fire alarm or sprinkler system is returned to service.

### L. Rail Shipments

1. Rail shipments to the Hanford Site must be authorized advance. Contact MSA Traffic at least three days prior to a rail car coming onto the Hanford Site (376-7164) to arrange for security inspections and clearances.
2. Right of Way. Any construction activity within 25 feet of the centerline of railroad tracks extending to 100 feet in some areas must be coordinated with the Buyer's Railroad Operations. (Tri-City Railroad)

## 4.0 WORK AND OPERATIONS AT THE WORKSITE REQUIRING SPECIFIC APPROVAL

- A. Working Hours. The Contractor shall not perform work at the Worksite on other than regular day shift, as set out in the Specifications, unless it has given prior written notification to the Buyer and has received approval in advance.
- B. The Contractor shall give the Buyer at least two (2) hours prior notice if its employees are to be working after the normal shift period Monday through Friday. The Contractor shall give the Buyer notice on the prior working day if its employees will be working before normal shift hours, Monday through Friday, or will be working at any time on Saturday, Sunday, or holidays. The notice shall include the type of work to be performed, location of work, date and hours of work, and description of any heavy equipment to be used. The Buyer advance approval is required any time work is to be performed at other than normal shift periods.
- C. Moving of equipment. The Contractor shall notify the Buyer at least two (2) working days prior to the date it proposes to move any heavy equipment into or from the Worksite and shall not move any such equipment in or from the Worksite until receipt of written approval from the Buyer.
- D. Electrical System Tie-Ins and Equipment Testing. When a tie-in is required to the existing plant electrical systems of four hundred eighty (480) volts or higher, the Contractor shall contact the Buyer at least fourteen (14) working days prior to the desired tie-in date and shall not tie-in until receipt of the Buyer's approval.

After acceptance but prior to final energization, the Buyer will perform certain necessary testing, not included in this Contract, of new service equipment and facilities. These tests will include high voltage D.C., tests of power cable, Dobie test of transformers and switchgear insulation, oil sampling, transformer turn ratio, etc.

## 5.0 RECEIPT OF CONTRACTOR'S SUPPLIES AND/OR EQUIPMENT AT SITE

The Contractor shall not schedule supplies and/or equipment for delivery to the Hanford Site until such time as the Contractor is mobilized to receive or accept their property at the Worksite. The Contractor shall not be permitted to use the Buyer's mailing address and in no case shall material or equipment be addressed in care of the Buyer. It is recognized that special conditions may exist that would warrant



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assistance in the delivery of equipment or materials by the Buyer. However, the Contractor must have explicit prior written permission and authorization from the Buyer. Any deviation from this requirement will result in backcharge to the Contractor for any costs incurred by the Buyer.

### **6.0 PROTECTION OF PRODUCTS AND WORK**

The Contractor shall protect and preserve all products of every description (including products which may be Buyer furnished or Government owned) and all work performed. Until the Work is accepted as completed, Contractor shall have the risk of loss for damage to, loss or destruction of the Work, and for such products. If, as determined by the Buyer, products and work performed are not adequately protected by the Contractor they may be protected by the Buyer and the cost incurred by the Buyer charged to or deducted from any payments due the Contractor.

### **7.0 PROTECTION OF EXISTING FACILITIES**

- A. The existing facilities that are shown on the drawings, identified in the specifications, marked in the field, or the location of which are reasonably determinable by the Contractor shall be protected from damage by the Contractor and if damaged, shall be reported immediately, as an occurrence, to the Buyer. Any required repairs shall then be made by the Contractor, or by others, in a manner approved by the Buyer, at the Contractor's expense.
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the Worksite and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the Buyer may have the necessary work performed and charge the cost to the Contractor.
- C. When underground facilities which are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor, are encountered by the Contractor, work at such locations shall be stopped immediately and the Buyer notified. Work at such locations shall not continue until released by the Buyer.
- D. Any damage to existing facilities that are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor in sufficient time to avoid damage shall be reported immediately to the Buyer. Work at such locations shall not continue until released by the Buyer. Any required repairs shall be made by the Contractor, or by others, in a manner approved by the Buyer. If the repairs are made by the Contractor, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. If other extra expense is incurred by the Contractor due to the existence of facilities that are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor at the time of bidding, an equitable adjustment will be made and the Contract modified in writing accordingly.
- E. When excavation work endangers the stability of known existing facilities, the Contractor shall provide adequate shoring, bracing and temporary guying to protect the facilities until backfilling is completed. This protection shall be in the Contractor's responsibility entirely.



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### 8.0 HANFORD SITE STABILIZATION AGREEMENT

- A. The Site Stabilization Agreement for all construction work for the U.S. Department of Energy (DOE) at the Hanford Site consists of a Basic Agreement dated September 10, 1984, plus an Appendix A. (The Site Stabilization Agreement is available in the DOE Public Reading Room. The Site Stabilization Agreement will be made a part of this contract by reference upon award. The Contractor shall be required to comply with the most current Site Stabilization Agreement, and as modified throughout performance of the contract.)
- B. This Clause applies to employees performing work under U.S. Department of Energy Richland Operations Offices (RL) contracts or subcontracts in accordance with Section I Clause 52.222-6 Davis-Bacon Act (JUL 2005) in the classifications set forth in the Site Stabilization Agreement for work performed at the Hanford Site.
- C. Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over RL construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory Contractor or subcontractor shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A.
- D. Contractors and subcontractors at all tiers who are not signatory to the Site Stabilization Agreement and who are not required under paragraph 8.0-3 above to become signatory to the Site Stabilization Agreement shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Site Stabilization Agreement:
1. Article VII Employment (Section 2 only)
  2. Article XII Non-Signatory Contractor Requirements
  3. Article XIII Hours of Work, Shifts, and Overtime
  4. Article XIV Holidays
  5. Article XV Wage Scales and Fringe Benefits, (Sections 1 & 2 only)
  6. Article XVII Payment of Wages-Checking In & Out, (Section 3 only)
  7. Article XX General Working Conditions
  8. Article XXI Safety and Health
- E. The Contractor agrees to make no contributions in connection with this Contract to Industry Promotion Funds, or similar funds, except with the prior approval of the Contracting Officer.
- F. The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964, (Public Law 88-349-78 Stat. 238-239) and the U.S. Department of Labor regulations in implementation thereof (29 CFR Parts 1, 3, 5).



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- G. The Contracting Officer may direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the Site Stabilization Agreement, including its Appendix A, is modified by the involved parties.
- H. In the event of failure to comply with paragraphs 8.0-3 through 8.0-6 above, or failure to perform any of the obligations imposed upon the Contractor and its subcontractors, the Contracting Officer may withhold any payments due to the Contractor and may terminate the Contract for default.

The rights and remedies of the Government provided in this paragraph (1) above shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this contract.

- I. The requirements of this paragraph are in addition to, and shall not relieve the Contractor of any obligation imposed by other Clauses of this Contract, including those entitled, FAR 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation (JUL 2005), FAR 52.222-6, Davis-Bacon Act (JUL 2005), FAR 52.222-7, Withholding of Funds (FEB 1988), FAR 52.222-8, Payrolls and Basic Records (FEB 1988), FAR 222-10, Compliance with Copeland Act Requirements (FEB 1988), and FAR 52.222-12, Contract Termination—Debarment (FEB 1988).
- J. The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this paragraph, and to preserve such records for a period of 3 years thereafter for all employees performing such work. Such records will contain the name, address, social security number of each such employee, correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by paragraphs 8.0-3 through 8.0-7. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit employee interviews during working hours on the job.
- K. The Contractor agrees to insert this Clause, including this paragraph 11, in all subcontracts for the performance of work subject to the Davis-Bacon Act.

### **9.0 FEDERAL ACQUISITION CLAUSES**

#### **FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION. (JUL 2005)**

- A. *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- B. *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.



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- C. *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- D. *Payrolls and basic records.*
- (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- E. *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

### **FAR 52.222-6 DAVIS-BACON ACT (JUL 2005)**

A. *Definition.*—"Site of the work"—

- 1) Means--
  - a) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and
  - b) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—
    - 1) Located in the United States; and
    - 2) Established specifically for the performance of the contract or project;
- 2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
  - a) They are dedicated exclusively, or nearly so, to performance of the contract or project; and



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- b) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;
- 3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

### B.

1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
2. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
3. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.
4. The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321)



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shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

### C.

1. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination.
- b. The classification is utilized in the area by the construction industry.
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

2. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

3. In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
4. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- D. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the



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benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- E. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

### **FAR 52.222-7, WITHHOLDING OF FUNDS (FEB 1988)**

Buyer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other contract with the same Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Buyer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **FAR 52.222-8, PAYROLLS AND BASIC RECORDS (JUNE 2010)**

- A. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

B.

- 1. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying



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- number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional [Form WH-347](#) is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.
2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
    - a. That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
    - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
    - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  3. The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
  4. The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- C. The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.



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### **FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)**

#### *A. Apprentices.*

1. An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—
  - a) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
  - b) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
2. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
3. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
4. (4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
5. (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
6. (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### *B. Trainees.*

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration,



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Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

1. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.
  2. In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- C. *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

### **FAR 52.222-10, COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Contract.

### **FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)**

- A. *Definition.* "Construction, alteration or repair," as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
1. Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  2. Painting and decorating;
  3. Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  4. Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and



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5. Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
- B. The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
1. Davis-Bacon Act;
  2. Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the clause is included in this contract);
  3. Apprentices and Trainees;
  4. Payrolls and Basic Records;
  5. Compliance with Copeland Act Requirements;
  6. Withholding of Funds;
  7. Subcontracts (Labor Standards);
  8. Contract Termination – Debarment;
  9. Disputes Concerning Labor Standards;
  10. Compliance with Davis-Bacon and Related Act Regulations; and
  11. Certification of Eligibility.
- C. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- D.
1. Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
  2. Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- E. The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.



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### **FAR 52.222-12, CONTRACT TERMINATION--DEBARMENT (FEB 1988)**

A breach of the Contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the Contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

### **FAR 52.222-13, COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this Contract.

### **FAR 52.222-14, DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this Contract. Disputes within the meaning of this Clause include disputes between the Contractor (or any of its subcontractors) and the Buyer, the U.S. Department of Labor, or the employees or their representatives.

### **FAR 52.222-15, CERTIFICATION OF ELIGIBILITY (FEB 1988)**

- A. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- B. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR (a)(1).
- C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **FAR 52-222-27, AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

- A. Definitions.

“Covered area,” as used in this Clause, means the geographical area described in the solicitation for this Contract.

“Deputy Assistant Secretary,” as used in this Clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Employer identification number,” as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

“Minority,” as used in this Clause, means--



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1. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
  2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  3. Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
  4. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- B. If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this Clause and the Notice containing the goals for minority and female participation stated in the solicitation for this Contract.
- C. If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- D. The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Clause. The goals stated in the solicitation for this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- E. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this Clause, Executive Order 11246, as amended, or the regulations thereunder.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this Clause shall be based upon its effort to achieve maximum



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results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

1. Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
2. Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
3. Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
4. Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
6. Disseminate the Contractor's equal employment policy by--
  - a. Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its Contract obligations;
  - b. Including the policy in any policy manual and in collective bargaining agreements;
  - c. Publicizing the policy in the company newspaper, annual report, etc.;
  - d. Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - e. Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.



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7. Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  8. Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
  9. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  10. Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
  11. Validate all tests and other selection requirements where required under 41 CFR 60-3.
  12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
  13. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this Contract are being carried out.
  14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  15. Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- H. The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor--



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1. Actively participates in the group;
  2. Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  3. Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
  4. Makes a good-faith effort to meet its individual goals and timetables; and
  5. Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- J. The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- L. The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
- M. The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.
- N. The Contractor shall designate a responsible official to--
1. Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
  2. Submit reports as may be required by the Buyer or the Government; and
  3. Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily



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- understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- O. Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **FAR 52.225-11 BUY AMERICAN ACT CONSTRUCTION MATERIALS (JUN 2009)**

A. *Definitions.* As used in this clause--

“Caribbean Basin country construction material” means a construction material that--

1. Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

1. Means any item of supply (including construction material) that is—
  - a. A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - b. Sold in substantial quantities in the commercial marketplace; and
  - c. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
2. Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means--

1. For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus



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allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

1. A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
2. A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
3. A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
4. A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

1. An unmanufactured construction material mined or produced in the United States;
2. A construction material manufactured in the United States, if—
  - a. The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
  - b. The construction material is a COTS item.

“Free Trade Agreement country construction material means” a construction material that--

1. Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Foreign construction material” means a construction material other than a domestic construction material.



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“Least developed country construction material” means a construction material that--

1. Is wholly the growth, product, or manufacture of a least developed country; or
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that--

1. Is wholly the growth, product, or manufacture of a WTO GPA country; or
2. In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

*Construction materials.*

1. This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.
2. The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
3. The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: \_\_\_\_\_  
[Contracting Officer to list applicable excepted materials or indicate “none”]
4. The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--
  - a. The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
  - b. The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - c. The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
5. Request for determination of inapplicability of the Buy American Act.

Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

1. A description of the foreign and domestic construction materials;



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2. Unit of measure;
3. Quantity;
4. Price;
5. Time of delivery or availability;
6. Location of the construction project;
7. Name and address of the proposed supplier; and
8. A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - a) (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - b) (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - c) (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

*Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			



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Foreign construction material			
Domestic construction material			

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information. ]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

### **FAR 52.236-2, DIFFERING SITE CONDITIONS (APR 1984)**

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Buyer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- B. Buyer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Clause and the Contract modified in writing accordingly.
- C. No request by the Contractor for an equitable adjustment to the Contract under this Clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this Clause for giving written notice may be extended by the Buyer.
- D. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

### **FAR 52.236-3, SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)**

- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Buyer or the Government, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully



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performing the work, or for proceeding to successfully perform the work without additional expense to the Buyer or the Government.

- B. Buyer assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Buyer or the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

### **FAR 52.236-5, MATERIAL AND WORKMANSHIP (APR 1984)**

- A. All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Buyer, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.
- B. The Contractor shall obtain the Buyer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Buyer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Buyer, the Contractor shall also obtain the Buyer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- C. All work under this Contract shall be performed in a skillful and workmanlike manner. The Buyer may require, in writing, that the Contractor remove from the work any employee the Buyer deems incompetent, careless, or otherwise objectionable.

### **FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract.